

Remarks/Arguments

Claims 1-10 are under rejection and claims 11-19 are withdrawn. Applicant hereby affirms the election made by Michael Schmitt on March 20, 2003.

Rejection Under 35 USC § 112

The Examiner has rejected claim 3 as indefinite relative to the use of the term "interface". Claim 1 is the base claim for dependent claim 3. Claim 1 recites a user interface, which is the antecedent for the interface of recited in claim 3. Nevertheless, in an effort to advance this case, claim 3 has been amended in accordance with the Examiner's suggestion.

Rejection Under 35 USC § 102(a)

Claims 1-10 were rejected under 35 USC § 102(a) because the Examiner considers the claims anticipated by the Sony CyberFrame PHD-A55 product as described in web pages from TechTV and Outpost. From the footers on the printouts of these references it appears that they were printed and presumably retrieved on March 21, 2003. The TechTV reference states that it was posted "October 1, 1999, modified September 30 1999"; however this reference is not from a well-established, reliable periodical and there is no assurance that this date is correct or that the article has not been modified subsequent to the dates stated. There is no date on the Outpost reference.

In rejecting claim 1, the Examiner considers the CyberFrame to inherently include a controller that processes and transfers the image. Applicant respectfully submits that the references cited by the Examiner have not been authenticated as being publicly accessible prior

to the filing date of the application. *In re Wyer*, 655 F.2d 221, 210 USPQ 790 (CCPA 1981) ("the one who wishes to characterize the information, in whatever form it may be, as a 'printed publication' ... should produce sufficient proof of its dissemination or that it has otherwise been available and accessible to persons concerned with the art to which the document relates and thus most likely to avail themselves of its contents"). The Examiner has not stated on what date the cited references were retrieved from the Internet. It is not reasonable to assume that they existed in the present form prior to the filing date of the application. It is well-known that different websites have different practices, and standards for publication, site maintenance, and therefore pages may appear with typos, other errors, and modifications from prior version. The publications of a reputable scientific journal or other periodical may have certain reliability and trustworthiness relative to the accuracy of content and dates of publication, while those of a retail business or Web service, such as TechTV and Outpost cannot be presumed to have such reliability and trustworthiness. Unless the Examiner can establish that the cited references existed in their present form prior to the application's filing date, it is quite possible that they did not actually exist on a date prior to filing and/or the web pages have been modified since the filing of the application to reflect, for example, details of the CyberFrame that came into existence after the filing date of the present application. This is particularly applicable to the undated Outpost reference used to support the rejection of claims 2-7.

In short, unless the Examiner can provide evidence to authenticate that both the TechTV and Outpost references (1) existed in their current form and (2) were publicly accessible prior to the application filing date, neither reference has been authenticated according to MPEP 2128 or generally accepted evidentiary principles concerning, for example, the use of hearsay evidence and unauthenticated business records. Accordingly, such further authenticating information should be provided or the rejections withdrawn.

The rejections should also be withdrawn because it has not been established that the alleged inherent features are present in the CyberFrame. "To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted). "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

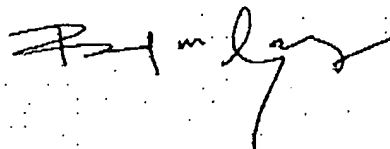
In the present rejections, the Examiner states that there must be a controller that processes and transfers the image (claim 1) and an image buffer (claim 2), but the Examiner has not provided any rational for why this is necessarily the case for each feature and ruled out other technical possibilities. Accordingly, the rejections of claims 1 and 2 as inherent should be withdrawn or a rational provided as to why the claimed features are necessarily present, as opposed to a probability or possibility of being present.

CONCLUSION

Applicant submits that in view of the foregoing arguments and/or amendments, the application is in condition for allowance, and favorable action is respectfully requested. The

Commissioner is hereby authorized to charge any fees, including extension fees, which may be required, or credit any overpayments, to Deposit Account No. 50-1001.

Respectfully submitted,



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